

**California Commission on  
Health and Safety and Workers' Compensation**

**MINUTES OF MEETING**

Meeting Day and Date: Friday, November 8, 1996

Meeting Location: State Building  
1350 Front Street  
Auditorium B-109  
San Diego, California

Commission Members Present:

Chairman Tom Rankin  
Commissioner James J. Hlawek  
Commissioner Leonard McLeod  
Commissioner Gerald O'Hara  
Commissioner Kristen Schwenkmeyer  
Commissioner Robert B. Steinberg  
Commissioner Darrel (Shorty) Thacker  
Commissioner Gregory Vach

Commission Members Absent:

None

Commission staff:

Christine Baker, Executive Officer of the Commission

## **Commission on Health and Safety and Workers' Compensation**

### **Minutes of November 1996 Meeting**

#### **Welcome**

The meeting was called to order at 10:00 am by Chairman Tom Rankin.

#### **Adoption of Minutes**

Chairman Rankin asked for a motion regarding the minutes of the Commission meeting on September 16, 1996, which had been submitted for approval by Christine Baker. Commissioner Hlawek moved that the minutes be adopted, Commissioner O'Hara seconded the motion, and the motion passed unanimously.

#### **Welcome to New Commissioner**

Chairman Rankin extended a welcome on behalf of the Commission to new Commissioner Darrel W. (Shorty) Thacker, who was appointed by Governor Pete Wilson to represent organized labor. Mr. Thacker is the Director of Field Support Operations for the Bay Counties District Council of Carpenters.

Commissioner Thacker was administered the oath of office by Chairman Rankin.

#### **Appreciation for Outgoing Commissioner**

Outgoing Commissioner Robert H. Alvarado was awarded a Certificate of Appreciation for his service to the Commission. Chairman Rankin presented the Certificate which was signed by all of the Commission members. Mr. Alvarado expressed his thanks to the Commission and staff.

#### **Executive Officer's Report**

Chairman Rankin called upon Executive Officer Christine Baker to report on Commission projects and activities. Ms. Baker focused her discussion on some of the potential projects that the Commission may wish to undertake.

### *Tracking Illegally Uninsured Employers*

Ms. Baker explained that employers who are insured for workers' compensation are placed at a competitive disadvantage with respect to illegally uninsured employers. Especially in industries with high premium rates, the illegally uninsured employer is able to underbid the insured employer.

Insured employers are again disadvantaged when taxes are raised to cover costs shifted to government services to assist the injured workers of employers who are illegally uninsured.

In addition, regulations have made it increasingly more difficult for injured workers to obtain benefits from the state-supported Uninsured Employers Fund.

Ms. Baker reported that several states have been using proactive programs to identify uninsured employers using computerized lists of employers and their workers' compensation policies. These have proved very successful at bringing uncovered employers into compliance.

For example:

- Wisconsin routinely checks all new employers for coverage. When an employer applies for an Unemployment Insurance ID Number -- required of virtually all new employers -- Wisconsin matches these employers to the rating bureau's policy information. Forty percent of these employers lack coverage. Nearly 100% compliance with the is achieved.
- In Colorado, NCCI reports whenever a policy is set for cancellation or expiration and future coverage has not been indicated at least 45 days prior to the end of the policy. They also have a map. Six thousand confirmed uncovered employers were identified, and nearly 100% compliance has been achieved. Eleven thousand additional employers are still under investigation.

The Commission may wish to consider the development of an Issue Paper on various methodologies to identify employers illegally uninsured for workers' compensation and bring them into compliance.

The Commission would work in concert with DWC, Self Insurance Plans, EDD, the Workers' Compensation Insurance Rating Bureau, and other interested parties on this Issue Paper.

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Identification of illegally uninsured employers and bringing them into compliance will save UEF and state General Fund monies, assist injured workers, and reduce the current competitive disadvantage and the tax burden on responsible employers.

Ms. Baker said that the monies for the project could be obtained from an existing contract with UC Berkeley's Survey Research Center, and the project would run from January through May 1997.

Ms. Baker asked if the Commission wanted to take a vote on this. Chairman Rankin suggested that she discuss all the potential projects first.

#### *Medical-Legal Study - Year 3*

Ms. Baker stated that Commission may wish to consider continuing the Medical-Legal Study, currently funded through June 1997. This would continue the ongoing monitoring of medical-legal costs, using WCIRB data. If the Commission chooses to continue this project, it would require only an amendment to the existing study contract.

#### *Vocational Rehabilitation Study - Year 3*

In June 1997, the report for the first two years of the planned three-year Vocational Rehabilitation study will be completed.

At this point the Commission will have extensive information on the costs to employers, frequency of use, and outcomes of workers eligible for rehabilitation, levels of disputes and workload estimates for the DWC Rehabilitation Unit and the WCAB, and valuable data sets on impairment levels for the population of workers in VR as well as those suffering permanent disabilities, but not excluded from their occupation.

Ms. Baker explained that extending the data collection for a third year will improve the Commission's understanding of the rehabilitation benefit. The Commission will be in a position to propose changes that will improve outcomes and reduce costs.

The following are among the variables requiring on a least a three-year time frame for evaluation:

- Percent of workers returning to modified or alternative worker lasting at least 12 months

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- Percent of workers working at:
  - plan completion
  - 90 days after plan completion
  - one year or more after plan completion
- Difference between pre-injury and post-injury earnings
  - at return to work
  - one year or more after plan completion
- Time from injury to return to work

Activities during the third year will include

- continued surveys of injured workers whose cases have been closed at least one year,
- continued analysis of all Rehabilitation Unit cases opened or closed on 1989-1995 injuries,
- continued extraction of data from files gathered from Rehabilitation Unit offices and closed for a least 90 days.
- linkage to outside data bases, including WCIRB, EDD, and the Department of Social Services.

The Commission may wish to consider voting to complete the final year of the three-year Vocational Rehabilitation study, which is currently funded for two years.

In response to a question from Commissioner Vach, Ms. Baker stated that the Commission had sufficient monies in its budget to cover all of the potential projects.

### *Industrial Disability Retirement Issue*

Disability definitions and methods of determining disability differ among the various compensation systems, including

- Workers' Compensation permanent disability,
- State Disability Insurance (SDI),
- Public Employees Retirement System (PERS),
- Social Security Disability Insurance (SSDI), and
- Supplemental Security Income (SSI).

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An injury can result in payments from more than one system as the claim matures. Since definitions and determination methods differ, benefits can be delayed and costly additional evaluations required.

Also, if benefits are substantially delayed, the injured worker may be forced back to inappropriate employment that could result in additional injury.

While competing demands lead to legitimate delays, complaints are common that the interaction of the various systems has become subject to excessive delays and inefficient levels of additional medical evaluations.

As an example, the California Correctional Peace Officers' Association (CCPOA) has been particularly frustrated over delays in PERS disability retirement determinations.

The Commission may wish to consider developing an issue paper regarding the interaction among industrial disability retirement determinations in various systems .

The following steps are contemplated:

- 1) Review the report of the Medical Employment Decision Task Force comprised of members of the
  - Department of Personnel Administration,
  - State Personnel Board,
  - Public Employees Retirement System,
  - Department of Industrial Relations,
  - State Compensation Insurance Fund,
  - California Highway Patrol, and
  - the California Youth Authority.
- 2) Develop program descriptions and disability definitions for the various disability systems to which injured workers can transition after benefits end in the workers' compensation system.
- 3) Develop descriptions of the overlap in benefits between programs. For example, Permanent Disability benefits affect Social Security Disability Insurance and Supplemental Security Income benefits. Analyze the impact of program overlap on benefit decisions in competing systems.
- 4) Obtain data on the disability retirement transitions from workers' compensation. This will likely only include information from PERS. Data

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on SSDI and SDI may not be available from the Social Security Administration.

- 5) Obtain data from PERS on the time from application to final decision for cases moving from workers' compensation disability to PERS disability retirement.
- 6) Interview representatives of
  - California Correctional Peace Officers' Association,
  - California Highway Patrol,
  - California Youth Authority,
  - Public Employees Retirement System, and the
  - Social Security Administration
- 7) Develop an Issue Paper for the Commission describing the information obtained and proposing changes appropriate to improving the efficiency of the transitions between benefit programs.

### *Interaction of Workers' Compensation and State Disability Insurance*

Ms. Baker said that two important issues have been raised concerning costs imposed on the State Disability Insurance system (SDI) by occupational injuries and illnesses.

- 1) Under the current regulations and statutes, Qualified Rehabilitation Representatives (QRR) are writing vocational rehabilitation plans that use funds from SDI to supplement or replace the Vocational Rehabilitation Maintenance Allowance (VMRA). This situation has arisen since the 1993 reform imposed a cap of \$16,000 on the total VR benefit, which under the previous statute had no limit. In order to write plans which meet their clients' needs, QRRs are looking for additional resources.
- 2) SDI provides a safety net for injured workers, paying benefits on an interim basis when payment in the compensation system is delayed or AOE/COE is in dispute.

SDI recovers from the insurer or the worker, often through a lien filed with the WCAB. With approximately 60,000 lien filings a year, substantial funds are tied up in disputed cases. Significant time and money are expended pursuing recoveries. The Employment Development Department (EDD), which handles SDI, often settles for a fraction of the total lien. EDD is not always informed of workers' compensation settlements. This results in a substantial but unknown cost on the worker supported SDI system.

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Each of these situations suggests that substantial resources are being shifted between the SDI system and the workers' compensation system.

This may result in higher taxes on -- or lower benefits to -- workers who are taxed to support the SDI system.

The extent to which resources are being shifted between systems is unknown. Until data is developed to answer this question, it will be difficult to propose cost-effective changes. Outstanding unrecovered liens have been estimated as high as \$300 million. Estimates of recoveries on liens range from 25% to 75%.

The Commission may wish to consider developing an Issue Paper on cost shifting between the State Disability Insurance system (SDI) and the workers' compensation system.

#### *Carve Out /Alternative Workers' Compensation Programs Study*

The Commission has an opportunity to obtain information on a new workers' compensation innovation and compare California's experience to those of other states.

The Center to Protect Worker' Rights in Washington DC has proposed that the Commission join in their planned evaluation of collectively bargained workers' compensation programs in the construction industry. The study is to be independently conducted by the Commission with funding from the Commission, from the Center, and possibly from employer oriented sources.

The Center has proposed that the first phase of this national study of carve out programs be conducted in California in conjunction with the Commission.

On Tuesday, October 29, Commission staff held a preliminary meeting with selected members of the workers' compensation community to discuss the feasibility of studying the carve out issue.

After discussion regarding the availability of data, the participants recognized that it is still too early to evaluate the effectiveness of the program. Conclusions drawn at this time could be subject to misinterpretation.

However, it was determined that it was important to identify and establish some baseline measurements for the long term evaluation. It was also deemed important to conduct an independent, outside study and that the Commission was the proper entity to do so.



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The group felt that the first step is to develop a detailed description of the carve out programs in California and determine what data is and will be available. The second step would be to determine how outcomes should be measured. All agreed that this study needed to be conducted over a period of several years, but that some preliminary information could be gathered.

As with all Commission projects, an advisory group would be formed to assist in this endeavor. The Center to Protect Workers' Rights would serve as an ex-officio member, and interested members from the California workers' compensation community would serve on that committee.

The question of funding was discussed. The Center to Protect Workers' Rights will contribute some funds; the Commission may wish to consider funding a portion of the monies needed.

Ms. Baker stated that the cost of the study is still being worked out, and she would like to explore the feasibility of inviting contributions from others in the workers' compensation community that would be interested in supporting this endeavor. The Commission members were provided with information regarding the State Administrative Manual requirements of establishing a "Special Trust Fund" for such monies that would be administered by the Commission.

Commissioner O'Hara stressed the need to track the outcomes of the same types of injuries in both kinds of workers' compensation systems.

Commissioner Vach observed that the study would be somewhat incomplete if it did not determine from the participants why the carve out program did, or didn't work in certain circumstances. Ms. Baker clarified that there will be surveys of all the participants.

Chairman Rankin noted that some in the audience wished to comment.

Robert H. Alvarado, outgoing Commissioner and Administrative Officer for the Bay Counties Council of Carpenters, stated that alternative workers' compensation programs are being advocated by some and that such a study is very important and would be beneficial to everyone.

Edward C. Woodward, President of the California Workers' Compensation Institute, expressed support for the proposed study and said that it would have an impact beyond carve out agreements. Such a project would offer approaches in establishing methodologies to study alternative workers' compensation dispute resolution systems, as well as providing hard data. Mr. Woodward stated that CWCI would support the proposed study.

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Alan Tebb said he was the CWCI General Manager for 25 years and is currently a consultant. One of his clients, USA Casualty, is active in carve out workers' compensation programs and strongly supports an independent study to assess the long range of impact of those programs. Even though the data is still pretty green, they think this is the time to start building, to define what these programs are and what they aren't, and determine as precisely as possible what data are necessary to evaluate their cost and benefits.

Douglas Kim of the Applicants' Attorneys Association expressed concern that private funding might be perceived as a possible bias of the study. Ms. Baker responded that Mr. Kim had a very good point but that there are state administrative manual requirements that monies from private groups have to be placed in a trust fund. Also, the Project Advisory Committee would consist of representatives from throughout the workers' compensation community, so that there would not be undue influence from any one group. With this arrangement, Ms. Baker believes that the project would be protected from any bias.

Commissioner Vach added that he thought it would be appropriate that if the Commission were going to receive funds from a labor research organization that it also accept monies from employers. He does not think ultimately that it makes a whole lot of difference -- the Commission will not be swayed by the source of the funds.

In response to a question from Commissioner Steinberg, Ms. Baker clarified that the Commission would select the independent research organization s to perform the study.

#### *Improving DWC Audit Function*

Ms. Baker continued by describing another proposed project which focuses on improving the DWC Audit Function. As currently structured, the auditing and penalty assessment program of the DWC Audit Unit is not uniformly applied to all adjusting locations. The results cannot be extrapolated to assess the overall performance of the industry.

- "Random" audits are not really random. One objective might be to make the likelihood of any case being audited in a random audit the same for all cases, regardless of the location or the size of the insurer.
- Insurers are not selected randomly. Decentralized entities with more locations are audited more often.
- For larger locations with many cases, the likelihood of any case being audited is smaller.

This issue has become more important since the elimination of the minimum rate law where caseloads for claims administrators have been increased and profit margins squeezed.

The Commission may wish to consider implementing a review of DWC's audit sample selection and penalty assessment mechanisms, which could include recommendations for

- improving the auditing mechanism that would increase the incentive for insurers to improve performance,
- making applications of audits more uniform,
- rewarding good locations for improving performance.

Commissioner Vach asked if these issues have been brought to the attention of the DWC. Ms. Baker replied that the Commission has not done so.

### *Profile of DWC District Office Operations*

Ms. Baker reported that concern has been expressed regarding the closing of some DWC offices, sometimes without sufficient notice to DWC staff, the workers' compensation community, or to the public.

Complaints have also been received regarding the level of service provided to injured workers, employers, their representatives, and the public at certain DWC district offices.

Specifically mentioned were the following:

- Lack of staff available to respond to in-person and phone inquiries and requests.
- Lost or misplaced case files.
- Inconsistencies in service of hearing notices.
- Inadequate equipment
  - insufficient numbers of computer terminals
  - personal computers are too old
- Hiring freezes have caused unnecessary workload backlogs.
- Calendars need to be set far into future due to hearing backlogs.
- Case "churning" leading to delays in case resolution.

As part of the Commission's responsibility to oversee state operations which administer the workers' compensation program, this project is designed to provide insights and knowledge in areas which have been identified as problematic.

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The proposed project would first develop an overview profile of the DWC district offices. From that profile, Commission members will select various offices in which to conduct a walk-through and evaluation of the procedures and operations.

Profiles of each district office could include these general areas:

- classifications and staffing levels
- delays in filling staff vacancies
- incoming workload
- hearings scheduled and held
- next available calendar dates, by type of hearing
- average time frames between each stage of case resolution

From that information, the Commission could select several offices for walk-throughs, perhaps including some in the Los Angeles basin area which may be experiencing increased workload due to office closures.

Ms. Baker stated that the Commission staff would coordinate the project and that full DWC cooperation is necessary.

### **Commission Vote on Proposed Projects**

Chairman Rankin commented that it appeared there was pretty much a consensus among the Commission members on the proposed projects, with the possible exception of the DWC Audit project. He suggested that the DWC Audit project be put on hold until the Commission can notify DWC AD Casey L. Young that the Audit function needs review and recommend that DWC address the problem.

Chairman Rankin said he would entertain a motion to approve all of the potential projects, with the exception of the DWC Audit project.

Commissioners Thacker and O'Hara so moved, Commissioner Hlawek seconded, and the motion passed unanimously.

Chairman Rankin asked Ms. Baker to continue the discussion regarding proposed public hearing and forums.

### ***Public Forum on the Permanent Disability Study Findings***

Ms. Baker said that many in the workers' compensation community are looking forward to the RAND report on the permanent disability issue, which is due in July

1997. This proposed public forum would provide the opportunity for experts, members of the community, and the public to discuss the report and share observations and opinions. The RAND report and the reaction to its findings will support Commission recommendations for legislative and/or administrative changes to the permanent disability program.

The Commission may wish to consider holding a public forum to discuss the findings and recommendations developed by RAND on the permanent disability issue. Since the report is due in July 1997, the forum could be held in September or October 1997.

***Public Hearing/Open Forum on the Cal-OSHA High Hazard Targeted Inspection Program and Assessment***

Ms. Baker continued by saying that the Commission may wish to consider holding a public hearing/open forum to discuss the Cal-OSHA High Hazard Targeted Inspection Program and Assessment.

This public hearing/open forum would be held before the assessment for the Cal-OSHA High Hazard Targeted Inspection Program is scheduled to be repealed on January 1, 1999, per Labor Code Section 62.7.

This would provide the opportunity for the workers' compensation community to discuss and comment on the operation of the program and its effectiveness. This would also support potential Commission recommendations in this area and also provide information to the Legislature regarding continuing the program.

***Public Hearing/Open Forum on Workers' Compensation Fraud***

The reform legislation directed the Workers' Compensation Fraud Assessment Commission and the Department of Insurance's Fraud Division to deal with suspected fraud in workers' compensation claims. The workers' compensation community is being assessed about \$25 million per year to fund those activities.

The Commission may wish to consider examining the cost-effectiveness of the Department of Insurance's workers' compensation fraud activities by framing the issues and conducting a public hearing. Representatives from employers, workers, the California Attorney General's Office, insurers' Special Investigative Units and county district attorneys could be invited to speak on this issue.

The results of the hearing might lead to a study of this issue, conducted by an independent research organization.

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#### *Legal Review/Legislative Recommendations*

The Commission is mandated to develop legislative, as well as administrative, recommendations for improvements to health, safety and workers' compensation programs.

Ms. Baker explained that the Commission needs to be able to obtain a timely, thorough, objective, and comprehensive legal review and opinion on many significant aspects of these vital systems.

The Commission may wish to consider having legal expertise available when needed for analysis and formulation of recommendations for proposed Legislative changes. The Commission could hire a Retired annuitant such as a WCAB referee or other legal expert and the cost could be absorbed out of Commission's existing budget for temporary help.

#### **Commission Vote on Proposed Public Hearings**

Chairman Rankin asked if there were a motion to approve these proposed public hearings and to engage a legal person to help the Commission develop legislative recommendations. Commissioner O'Hara so moved, Commissioner Vach seconded and the motion passed unanimously.

#### **1997 Commission Meeting Schedule**

After some discussion, the Commission adopted a meeting schedule for 1997:

February 20, 1997	Los Angeles
April 24, 1997	Sacramento
June 19, 1997	Los Angeles
September 18, 1997	Sacramento or San Francisco
October 23, 1997	Sacramento or San Francisco (Possible Permanent Disability hearing with Commission meeting)
November 21, 1997	San Diego

### **Commission Vote on Injured Worker Study Report**

Chairman Rankin noted that during the last Commission meeting in September, the Commission voted four to three to accept the Injured Worker Study report entitled "Navigating the California Workers' Compensation System: The Injured Workers' Experience". However, it was later determined that the vote was invalid because any issue requires at least two labor and two employer votes to pass.

Chairman Rankin announced he would like to entertain a motion to accept the findings of the study. He explained that the Commission is dealing with the report recommendations through its project to develop prototype informational materials for injured workers.

Commissioner Hlawek moved that the Commission accept the findings of the Injured Worker Study, Commissioner O'Hara seconded and the motion was passed unanimously.

### **Election of the 1997 Commission Chair**

Since this was the final Commission meeting in 1996, Chairman Rankin suggested that the members elect a Chairman for 1997. According to statute, the Commission Chairman for 1997 is to be elected from those Commission members representing employers.

Commissioner Steinberg nominated Commissioner James J. Hlawek and Commissioner Vach seconded. There were no other nominations. Commissioner Hlawek was unanimously elected Commission Chairman for 1997.

### **Public Comments**

Commissioner Vach said that he wanted to recognize an informal member of the Commission, his wife Jan. The Commission members, staff, and audience responded with applause.

Ms. Baker said that Mr. Uros Jelcic had contacted her and wished to make some comments about his experiences as an injured worker.

Mr. Jelcic said that he has been a United States citizen for 15 years. When he was injured on the job, he experienced difficulty in determining what to do because various people gave him differing instructions and information. As many injured workers do, he tried to resolve his claim without an attorney because he found out he could not talk with anyone if he did have an attorney.

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Mr. Jelcic has since studied various workers' compensation systems in the United States and Canada and has come to the conclusion that the California system is not so bad, but that it does not respect the injured workers. Mr. Jelcic gave his opinion that the DWC Administrative Director is not doing anything to improve the system and doesn't know his that mission is to protect people from harassment and to protect injured workers.

Commissioner Hlawek responded that he thought Mr. Jelcic raised some valid points and said that we have all experienced frustration with the system, but he believes we are all united in improving the system. He noted that the issues Mr. Jelcic brought up here are some of very issues on which the Commission is gathering data through studies. Commissioner Hlawek pointed out that the Commission cannot take testimonial information and use that to change the position of the Legislature or other governmental entities. One of the primary things the Commission is trying to do is get statistical information to support changes to eliminate abuses in the system such as those Mr. Jelcic has brought up.

Mr. Jelcic continued by saying that there should be a manual specifying what administrators and injured workers should do. Chairman Rankin explained that the Commission does not have the authority to adopt a manual that would be binding on any one. The Commission can only recommend that it be done.

Ms. Baker stated that she would be happy to meet with Mr. Jelcic to discuss some of his concerns and ideas. She said she would get together with Mr. Jelcic to make arrangements for such a meeting. Chairman Rankin thanked Mr. Jelcic for his remarks.

[Special Note: Ms. Baker met with Mr. Jelcic on December 2, 1996 in San Francisco regarding his concerns with the workers' compensation system. Based upon his own experiences and research he has done on other workers' compensation systems in the United States and Canada, Mr. Jelcic believes that a "Workers' Compensation Claim and Trial Manual" would be useful for injured workers to resolve their claims and receive benefits in a timely manner. He recommended that such a manual also specify the requirements to be met by all parties, including the insurer, employer, injured worker, the Division of Workers' Compensation and the Workers' Compensation Appeals Board.]

### **Other Business**

Commissioner Vach said that he understood that Ms. Baker was having trouble getting information from DWC from time to time and asked her to elaborate on



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that. Ms. Baker responded that she thinks she is working through those difficulties but that she has had problems getting data and requesting information.

Ms. Baker pointed out that the Commission is going to need DWC's absolute cooperation for the DWC District Office Profile project. She suggested that the Commission send a letter when we begin gathering the data so that the division realizes the importance of this project.

Commissioner Vach suggested that the Commission could request that the administration sign off on that somehow. Ms. Baker said she would follow up on that.

Chairman Rankin if anyone had further business or additional comments. There was no response.


**Adjournment**

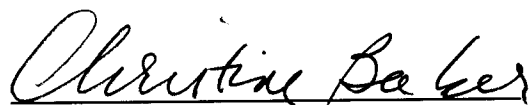
Chairman Rankin asked if there were a motion to adjourn. Commissioner O'Hara so moved, Commissioner Hlawek seconded, and the motion carried unanimously.

The meeting was adjourned at 11:15 a.m.

Approved:

Respectfully submitted,

  
\_\_\_\_\_  
James J. Hlawek, Chairman      Date

  
\_\_\_\_\_  
Christine Baker, Executive Officer